IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Bail Appl..No. 5314 of 2007()

CRMP.2101/2007 of DISTRICT COURT, ALAPPUZHA
C.C.NO.621/2007 OF THE J.F.C.M, AMBALAPUZHA

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: PETITIONER/ACCUSED

N.B.SUBASH CHANDRAN, S/O BHASKARAN,
NALUTHINGAL, THOTTAPPALLI P.O.,
ALAPPUZHA DISTRICT, PIN-688 563.

BY ADV. SRI.P.N.RAVINDRAN
SMT.M.M.DEEPA

RESPONDENTS: COMPLAINANT & STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5314 of 2007

Dated this the 4th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner claims to be a public and social activist. Against him a private complaint has been registered by the learned Magistrate, wherein, offences under Sections 324, 354, 506(2) and 420 r/w 34 I.P.C are alleged. The crux of the allegations is that the complainant/victim went to the petitioner demanding return of amounts deposited and the petitioner who was not in a position to return the deposits allegedly assaulted her and her husband indecently. The allegation of cheating is also raised.

2. The learned Magistrate took cognizance of the offences alleged and instead of following the normal procedure of issuing a summons on such a private complaint, directed that a warrant of arrest be issued against the petitioner. The petitioner accordingly finds a warrant of arrest issued by the learned Magistrate chasing him. He moved the learned Sessions Judge for anticipatory bail. The same was dismissed by the learned Sessions Judge with the observation that the petitioner can surrender before the learned Magistrate and seek regular bail.

3. The learned counsel for the petitioner submits that the allegations are totally false. At any rate, there is no justification for issuing a warrant of arrest at the first instance in a private complaint like the instant one. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate and seek regular bail. But he apprehends that without and before giving him an opportunity to appear before the learned Magistrate and seek regular bail, he may be arrested by the police with the sole purpose of vexation and harassment. He may be permitted to surrender in peace before the learned Magistrate and seek regular bail. At least that relief may be granted to the petitioner, it is prayed. The learned counsel for the petitioner, of course, further submits that the allegations are totally unacceptable that directions under Section 438 Cr.P.C may also deserve to be issued in favour of the petitioner.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. I am, at any rate, satisfied that the petitioner can be granted an opportunity to appear/surrender before the learned Magistrate and seek regular bail without the risk and threat of his arrest by the police in execution of the warrant.

6. This application is, in these circumstances, allowed in part. It is directed that the petitioner must surrender before the learned Magistrate and seek regular bail on or before 10.09.07. Till that date, the warrant of arrest issued by the learned Magistrate against the petitioner shall not be executed.

7. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-